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Withholding Exemption Certificate and Nonresident Waiver Request for Real Estate Sales

597-W

Part I Withholding Exemption Certificate

Seller's Information

Name		<input type="checkbox"/> Social security no. <input type="checkbox"/> CA corp. no. <input type="checkbox"/> FEIN <input type="checkbox"/> SOS file no.	
Street address		PMB no.	
City, State, ZIP Code		Phone number ()	Ownership percentage
Property address (if no street address, provide parcel number and county)			

Read the following and check the boxes as they apply (see General Information C, Exemptions from Withholding (Part I) in the instructions for definitions):

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. Is the total sale price of this property \$100,000 or less? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Are you a resident of California and living at the address shown above? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Does the property being sold qualify as your principal residence within the meaning of Internal Revenue Code (IRC) Section 121? .. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Is the seller a corporation that is qualified through the California Secretary of State or that has a permanent place of business in California? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Is the seller a partnership or a limited liability company (LLC) with recorded title to the property in the name of the partnership or LLC and will the partnership or LLC file a California tax return to report the sale and withhold on foreign and domestic nonresident partners as required? (Get FTB Pub. 1017, Nonresident Withholding Partnership Guidelines, for withholding information.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is the seller a tax-exempt entity under either California or federal law? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is the seller an irrevocable trust with at least one trustee who is a California resident and will the trust file a California tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is the seller an estate where the decedent was a California resident at the time of death and will the estate file a California fiduciary tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required? .. | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Is the seller a bank or a bank acting as a fiduciary for a trust? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Is the seller an insurance company, Individual Retirement Account (IRA), or qualified pension/profit sharing plan? | <input type="checkbox"/> | <input type="checkbox"/> |

Under penalties of perjury, I hereby certify that the information provided above is, to the best of my knowledge, true and correct. If conditions change, I will promptly inform the withholding agent. I understand that completing this form does **not** exempt me from filing a California income tax return to report this sale.

Seller's name (or seller's agent if seller is not an individual) and title (type or print) _____

Seller's Signature _____ Date: _____

If you answered "Yes" to **any** of the above questions, STOP HERE. You are exempt from the nonresident withholding requirements. Provide this form to your escrow company or the buyer (withholding agent).

If you answered "NO" to **all** of the above questions, you are subject to the nonresident withholding requirements. The required withholding is 3 1/3% of the **total** sale price. Do you expect your tax liability from the sale of this property to be less than that amount?

- ☐ Yes. Complete the *Nonresident Withholding Waiver Request* (Part II) and send this form to the Franchise Tax Board (FTB).
- ☐ No. STOP HERE. Your escrow officer will withhold 3 1/3% of the total sale price and send it to FTB on your behalf. Obtain the seller's copy of Form 597, Nonresident Withholding Tax Statement for Real Estate Sales, from the escrow officer to attach to your California income tax return when you file and claim the amount withheld.

Escrow Officer: If withholding is required, complete Form 597, Nonresident Withholding Tax Statement for Real Estate Sales, and send one copy to the FTB with the payment of withholding and give 2 copies to the seller. The seller needs a copy of Form 597 to claim the withholding credit on the California tax return filed to report the sale.

Part II Nonresident Withholding Waiver Request

State in detail your reason for requesting a withholding waiver or reduced withholding. If there is more than one nonresident seller, attach a separate sheet listing additional nonresident seller's information. Examples of situations where a waiver or reduced withholding will be allowed are IRC Section 1031 tax-free exchanges, installment sales, multiple sellers, etc.

Attach additional sheets if needed. The FTB cannot make a determination on your request unless you provide all required information and documentation. See instructions.

Buyer's Information

Name	<input type="checkbox"/> Social security no. <input type="checkbox"/> CA corp. no. <input type="checkbox"/> FEIN <input type="checkbox"/> SOS file no.
Street address	PMB no.
City, State, ZIP Code	Phone number ()

Property Information

Escrow Information

Date seller acquired property:	Name and address of Escrow Company:
Seller acquired property by (check one): <input type="checkbox"/> Purchase <input type="checkbox"/> Inheritance <input type="checkbox"/> Foreclosure/Repossession <input type="checkbox"/> Gift <input type="checkbox"/> 1031 Exchange call (888) 792-4900 U.S. toll-free or (916) 845-4900 <input type="checkbox"/> Other _____	
Use of property at time of sale: <input type="checkbox"/> Rental / Commercial <input type="checkbox"/> Secondary / Vacation home <input type="checkbox"/> Other (attach explanation)	Length of time used for this purpose: Years _____ Months _____
Seller's adjusted basis: Purchase price \$ _____ Add: improvements _____ Less: depreciation _____ Adjusted basis \$ _____	Escrow Company email address
Provide all required documentation listed in the instructions. Attach any other documents necessary to verify the adjusted basis.	Name of Escrow Officer: _____ Escrow number: _____ Escrow Company or Officer telephone number: () _____ FAX number: () _____ Contract price (total sale price): _____ Estimated close of escrow date: _____

Instructions for Form 597-W

Withholding Exemption Certificate and Nonresident Waiver Request for Real Estate Sales

References in these instructions are to the Internal revenue Code (IRC) as of January 1, 1998, and the California Revenue and Taxation Code (R&TC)

General Information

Requirement to File a California Tax Return

A completed and signed Form 597-W, Part I relieves the buyer of the requirement to withhold but does not eliminate the requirement that the seller must file a California tax return and pay the tax due.

Private Mailbox (PMB) Number

If you lease a mailbox from a private business rather than from the United States Postal Service, enter your PMB number in the field labeled "PMB no."

A Purpose

When California real estate is sold by a nonresident, buyers are required by law (R&TC Section 18662) to withhold 3 1/3% of the total sale price unless a withholding exemption is met or the Franchise Tax Board (FTB) authorizes a waiver or reduction in the withholding amount.

- Use Part I of Form 597-W to certify that you meet a withholding exemption for the sale of California real estate; or
- Use Part II of Form 597-W to request a waiver or reduction of the required withholding for the sale of California real estate.

B What is Real Estate Withholding?

Real estate withholding:

- Is a prepayment of the amount of income tax due from the gain on the sale of California real estate;
- Is not an additional tax on the sale of real estate;
- Is primarily intended to ensure that the income tax owed on the taxable gain from the sale will be paid;
- Reduces the likelihood that the seller will be subject to penalties for underpayment of estimated tax; and

- Is similar to wage withholding. As with wage withholding, the amount withheld is claimed as a credit against the income tax liability computed at the end of the taxable year.

If the amount withheld is more than the income tax liability, the difference will be refunded when a tax return is filed after the end of the taxable year.

C Exemptions from Withholding (Part I)

The seller is exempt from the withholding requirements if they have answered "Yes" to any of the questions in Part I. The completed Form 597-W, Part I, should be signed by the seller and given to the buyer or other withholding agent who should retain the form for five years following the close of the transaction. The buyer will be relieved of the real estate withholding requirements if the buyer relies in good faith on a completed and signed Form 597-W, Part I. A completed

Form 597-W, Part I, certifying an exemption of withholding does not eliminate the requirement that the seller must file a California income tax return to report the sale and pay any tax due.

The seller should answer "Yes" in Part I when:

1. **The total sale price of the California real property is \$100,000 or less.**
2. **The seller is a California resident on the date escrow closes.** A California resident is any individual who is in California for other than a temporary or transitory purpose or any individual domiciled in California who is absent for a temporary or transitory purpose. Sellers who are uncertain of their residency status can get assistance by calling the FTB at (800) 852-5711 or by getting FTB Pub. 1031, Guidelines for Determining Resident Status, for more information.
3. **The property qualifies as the seller's principal residence under IRC Section 121.** The home in which you live is your principal residence. You can only have one principal residence at a time. If you have two homes and live in both of them, the principal residence is the one you lived in most of the time. Even though you do not currently live in the property, it may still qualify as your principal residence for purposes of the withholding exemption. An example is a former California resident who moved out of state prior to the close of escrow. The property can qualify for the withholding exemption if it qualifies for the exclusion of income under IRC Section 121. An individual can exclude up to \$250,000 (up to \$500,000 for a married couple) of the gain on the sale of a principal residence. Sellers can qualify for this exclusion if, during the 5-year period ending on the date of the sale, they owned and lived in the property as their principal residence for at least 2 years. For examples and more details, get federal Publication 523, Selling Your Home, by accessing the Internal Revenue Service's (IRS) website at: www.irs.gov or by calling the IRS at (800) 829-3676.
4. **The seller is a corporation that is qualified through the California Secretary of State to do business in California or has a permanent place of business in California immediately after the transfer.** A corporation has a permanent place of business in California if it is organized and existing under the laws of California or if it is a foreign corporation qualified to transact intrastate business by the California Secretary of State. A corporation that has not qualified to transact intrastate business, such as a corporation engaged exclusively in interstate commerce, will be considered as having a permanent place of business in California only if it maintains a permanent office in California and the

office is permanently staffed by its employees.

5. **The seller is a partnership or LLC and the recorded title to the property is in the name of the partnership or LLC.** A partnership includes a syndicate, group pool, joint venture, or other unincorporated organization through which the business operation is carried on and which is not a corporation, trust, or estate. A partnership or LLC may be required to withhold on distributions of California source income to nonresident partners or members. For more information, get FTB Pub. 1017, Nonresident Withholding Partnership Guidelines.
6. **The seller is exempt from tax under either California or federal law.**
7. **The seller is a California irrevocable trust.** For withholding purposes, an irrevocable trust is considered a California trust if at least one trustee is a California resident. Irrevocable trusts are required to withhold on distributions of California source income to their nonresident beneficiaries. **Note:** If the seller is a revocable/grantor trust and one or more of the grantors is a nonresident, withholding is required. If all of the grantors of a revocable/grantor trust are residents of California, no withholding is required.
8. **The seller is a California estate.** For withholding purposes, an estate is considered a California estate if the decedent was a California resident at the time of death. Estates are required to withhold on distributions of California source income to their nonresident beneficiaries.
9. **The seller is a bank or a bank acting as the fiduciary for a trust.**
10. **The seller is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.**

D Nonresident Withholding Waiver Request (Part II)

This section should be completed if you do not meet any of the exemptions to withholding as shown in Part I and you believe that your estimated tax liability from the sale will be less than the required withholding.

Waiver requests are handled on a case-by-case basis. Generally, the FTB will reduce or eliminate the withholding amount when:

- The 3 1/3% withholding amount exceeds the estimated California tax liability from the sale; for example:

Selling Price	.....	\$250,000
Withholding Rate	.....	x 3.33%
Withholding Amount	.....	\$ 8,325
Gain on Sale	.....	\$ 50,000
Maximum Tax Rate	.....	9.3%*
Estimated Tax Liability	.....	\$ 4,650

*The maximum tax rates are 9.3% for individuals and 8.84% for corporations.

In this example, the withholding amount would be reduced to \$4,650. If the documentation provided shows that the estimated tax liability will be \$0 from the sale, a full waiver will be granted.

- The transaction involves an IRC Section 1031 exchange, a foreclosure, or an installment sale; or
- The transaction involves multiple sellers, some of whom are nonresidents of California.

Note: The withholding amount is 3 1/3% of the total sale price regardless of the percentage of interest owned in the property.

To receive a prompt determination, include all required information and documentation to support your request. Failure to include the required information, signatures, and documents can result in either a delay or denial of your request. Below is a list of the minimum documentation required for the FTB to make a determination. **Do not** send original documents.

This is a general guide. Additional information may be requested on a case-by-case basis.

• Loss or Small Gain

- ☐ The current sale escrow document (estimated closing statement or closing statement).
- ☐ Purchase escrow document (closing statement) from the original transaction.
- ☐ List of any improvements and related costs.

• Inherited Property

- ☐ The current sale escrow document (estimated closing statement or closing statement).
- ☐ The court documents showing the fair market value of the property at the time of inheritance, or the death certificate if the death occurred less than one year ago.

If the property was inherited more than two years ago, also:

- ☐ State whether the property was a rental. If yes, state how long it was rental property.
- ☐ List any improvements since the date of inheritance and related costs.

• IRC Section 1031 Exchange

- ☐ Completed and signed California Form 597-E, Nonresident Withholding Exchange Affidavit.
- ☐ The current sale escrow document (estimated closing statement, or closing statement).
- ☐ On Form 597-E indicate the basis of the property being sold.
- ☐ On Form 597-E indicate the state where the replacement property is located.

• Installment Sales

- ☐ Completed and signed California Form 597-I, Nonresident Withholding Installment Sale Agreement.
- ☐ The current sale escrow document (estimated closing statement, or closing statement).
- ☐ Purchase escrow document (closing statement) from the original transaction.
- ☐ The note agreement.
- ☐ List of any improvements and related costs.

• Recaptured Property (Foreclosure or Repossession)

- ☐ The current sale escrow document (estimated closing statement or closing statement).
- ☐ The original sale escrow document from the first time you sold the property prior to foreclosure.
- ☐ The original purchase escrow document (closing statement) from when you originally purchased the property.
- ☐ Statement of the amount of cash (down payment) received on the original sale prior to foreclosure.
- ☐ Statement of the amount of notes received or carried prior to foreclosure. Provide a copy of the note carried.
- ☐ Statement of the balance due remaining on the note.
- ☐ List of the foreclosure costs (the costs to get the property back).
- ☐ List of any improvements and related costs.
- ☐ The calculation of the gain from the original sale.
- ☐ A copy of federal Form 6252, Installment Sale Income, or California form FTB 3805E, Installment Sale Income, filed with your tax return in the year of the original sale.
- ☐ Deed in-lieu of foreclosure or trustee's deed upon sale.

E When to File This Form

When requesting a waiver or reduction in withholding, the Form 597-W should be completed and sent to the FTB as soon as you enter into a contract of sale.

The FTB will determine if the withholding should be eliminated, reduced, or if the request should be denied. The FTB usually processes applications within 45 days after receipt of all necessary information. If a

response from the FTB has not been received by the time title is transferred, the parties to the transaction may direct the escrow person to hold funds for withholding in trust up to 45 days from the date title is transferred.

If Form 597-W is not filed timely with the FTB and title passes to the buyer/transferee before the application can be processed, withholding of 3 1/3% of the total sales price is required. There is no provision to authorize an early refund after title has passed to the buyer/transferee and the withholding has been remitted to the FTB.

Any withholding waiver issued by the FTB applies only for the limited purpose of determining the withholding obligation under R&TC Section 18662. The withholding waiver would not apply for other issues that may arise in connection with the transfer. The FTB may accept evidence submitted with a waiver request for the purpose of issuing the withholding waiver; however, this evidence may not be adequate for other issues related to the transfer.

If you receive a determination letter from the FTB reducing the amount of withholding, the withholding agent must enter the confirmation number from the FTB determination letter on Form 597, Nonresident Withholding Tax Statement for Real Estate Sales, when payment is sent to the FTB. Payment **must** be sent with Form 597.

F Where to File This Form

If you meet one of the exemptions to withholding in Part I, the form should not be sent to the FTB. The Form 597-W, Part I, should be given to the buyer or escrow company. Be sure to sign the form to certify that you meet the exemption.

If you are requesting a waiver or reduction in the withholding (and do not meet one of the exemptions in Part I), the completed Form 597-W should be filed with the FTB to request an authorized determination. Fax Form 597-W to (916) 845-9512 or mail to:

NONRESIDENT WITHHOLDING SECTION
FRANCHISE TAX BOARD
PO BOX 651
SACRAMENTO CA 95812-0651

If you send your request by fax, **do not** send the original request by mail.

Please wait 10 working days after faxing your request and 13 working days after mailing your request, before contacting us.

G Additional Information

To order California tax forms not related to nonresident withholding or for more information you may contact us:

By Internet: You may download, view, and print California tax forms and publications. Go to our website at: **www.ftb.ca.gov**

By automated phone service: Use this service to order California tax forms and current year federal forms.

Have paper and pencil ready to take notes.

From within the
United States (800) 338-0505

From outside the
United States (not toll-free) (916) 845-6500

Follow the recorded instructions. This service is available 24 hours a day, seven days a week.

By mail – Please allow two weeks to receive your order. If you live outside of California, please allow three weeks to receive your order. Write to:

TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

In person – Most libraries, post offices, and banks provide free California personal income tax booklets during the filing season. Many libraries and some quick print businesses have forms and schedules for you to photocopy (you may have to pay a nominal fee). **Note:** Employees at libraries, post offices, banks, and quick print businesses cannot provide tax information or assistance.

Assistance for persons with disabilities

The FTB complies with provisions of the Americans with Disabilities Act. Persons with hearing or speech impairments, call:

From voice phone (800) 735-2922
(California Relay Service)

From TTY/TDD (800) 822-6268
(Direct line to FTB customer service)

For all other assistance or special accommodations, call (800) 852-5711.